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REPLY TO Wilmington Office

June 21, 2007

Via ECF and Hand Delivery

The Honorable Gregory M. Sleet
United States District Court
844 North King Street
Lock Box 19
Wilmington, DE 19801

RE: Talecris Biotherapeutics, Inc. & Bayer Healthcare LLC v. Baxter International, Inc. and Baxter Healthcare Corp., C.A. No. 05-349-GMS

Dear Judge Sleet:

Plaintiffs respectfully seek the assistance of the Court regarding a new issue concerning Baxter's request at the pretrial conference relating to the trial testimony of Mr. Lawrence Guiheen.

During the pretrial conference we advised the Court that Mr. Guiheen, who Baxter belatedly listed as a trial witness in response to Plaintiffs designation of Mr. Larry Stern, had never been identified in discovery. Since Plaintiffs had agreed to withdraw Mr. Stern to avoid unnecessary controversy, we suggested that the issue relating to Mr. Guiheen could be obviated in the same manner, i.e., that Baxter withdraw him.

Baxter declined, and instead represented to the Court at the pretrial conference that it would provide a "one paragraph" summary of Mr. Guiheen's proposed testimony, that Mr. Guiheen would not be "diving into the deep issues in this case", and that he would be merely "introducing Baxter" (Tr. From 6/14/07 Pretrial Conference at pp. 101-103). The Court granted leave for Plaintiffs to depose Mr. Guiheen on this "one paragraph" representation.

The next day, on June 15, 2007, we requested the summary of Mr. Guiheen's testimony. On June 20, 2007, having yet to receive the summary of Mr. Guiheen's testimony, Plaintiffs served the attached notice of deposition of Mr. Guiheen, following the Local Rules of this Court on notice and Delaware practice (see Ex. 1). Thereafter, Baxter sent a two-page letter, copy attached, setting forth over seventeen subject areas of proposed testimony in six paragraphs (see Ex. 2). The letter also stated that Mr. Guiheen "will

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testify to topics otherwise covered primarily in the depositions of Ron Lloyd, Matt Fazio, Dennis Young and Angela Blackshere”, depositions that embraced multiple 30(b)(6) topics, spanned over 770 pages of testimony and embraced 140 exhibits. (*Id.*) The identified subject areas relate to major issues in the case and bear on validity, infringement and damages.

Because Baxter’s “summary” of Mr. Guiheen’s testimony is materially at odds with its representations to the Court and Plaintiffs, and, at this late date on the eve of trial, it is both unfair and prejudicial to Plaintiffs, we requested that Baxter withdraw Mr. Guiheen to avoid the need for judicial intervention. At this writing, Baxter has failed to respond, necessitating this letter. We, therefore, respectfully request that the Court preclude Baxter from calling Mr. Guiheen as a witness at trial. This exclusion should not be prejudicial to Baxter because Baxter indicated in another letter yesterday (see Ex. 3), identifying eleven trial witnesses, that it may not even call Mr. Guiheen (see, *id.*, item 5 “Lawrence Guiheen and/or Ron Lloyd”).

We await guidance from the Court.

Respectfully submitted,

/s/ Jeffrey B. Bove

JBB/llw

Jeffrey B. Bove (#998)

Enclosures

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